

7. The allegation that there was no consideration for the deed referred to in the Amended Bill of Complaint as "Exhibit "A" is a conclusion of the pleader.

8. Paragraph "FIFTH" of the Bill of Complaint as last amended alleges no facts to show that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was without consideration.

9. No facts are alleged to show that there was no consideration for the deed referred to in the Amended Bill of Complaint as "Exhibit "A".

10. It affirmatively appears from the Amended Bill of Complaint that there was a consideration for the deed referred to in the Amended Bill of Complaint as "Exhibit "A".

VI. Comes the Respondent in the above entitled cause and demurs to paragraph "SEVENTH" of the Bill of Complaint as last amended and as grounds therefor assigns separately and severally the following:

1. The allegations of fraud and misrepresentation as contained in paragraph "SEVENTH" of the Bill of Complaint as last amended are conclusions of the pleader.

2. No facts are alleged to show the fraud and misrepresentation referred to by the Complainant in paragraph numbered "SEVENTH" of the Bill of Complaint as last amended.

3. Because it affirmatively appears from the Bill of Complaint as last amended that the Complainant is not in any way indebted to the Respondent.

4. Because it affirmatively appears from the Amended Bill of Complaint that the Complainant was not indebted to the Respondent at the time the deed in question was delivered.

5. It does not allege any debt to be due and owing by the Complainant to the Respondent.

6. It does not allege that the deed referred to in the Bill of Complaint as last amended as "Exhibit "A" was intended by both parties thereto as security for a debt.

7. Because it does not allege that the deed referred to

in the Amended Bill of Complaint as "Exhibit "A" was intended by the Respondent as security for a debt.

8. It does not allege that there is a debt due by the Complainant to the Respondent which continued after the execution and delivery of the deed referred to in the Amended Bill of Complaint as "Exhibit "A".

9. It does not allege that any evidence of debt was given by the Complainant to the Respondent.

10. Because it does not allege that there was a debt from the Complainant to the Respondent secured by the deed referred to in the Amended Bill of Complaint as "Exhibit "A" which continued after the execution and delivery of the said deed.

11. The allegations as to the Complainant's physical condition as contained in the Amended Bill of Complaint are conclusions of the pleader.

12. No facts are alleged to show Complainant's physical condition as alleged in the Amended Bill of Complaint.

13. The allegation that Complainant was not indebted to the Respondent at the time the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was given, is a conclusion of the pleader.

14. The allegation that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was without consideration is a conclusion of the pleader.

VII. Comes the Respondent in the above entitled cause and demurs to the Prayer for Relief of the Bill of Complaint as last amended and as grounds therefor assigns separately and severally the following:

1. Because it affirmatively appears from the Amended Bill of Complaint that the Complainant is not in any way indebted to the Respondent.

2. Because it affirmatively appears from the Amended Bill of Complaint that the Complainant was not indebted to the Respondent at the time the deed in question was delivered.

3. It does not allege any debt to be due and owing by the Complainant to the Respondent.

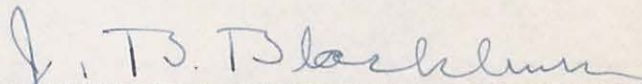
4. It does not allege that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was intended by both parties thereto as security for a debt.

5. Because it does not allege that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was intended by the Respondent as security for a debt.

6. It does not allege that there is a debt due by the Complainant to the Respondent which continued after the execution and delivery of the deed referred to in the Amended Bill of Complaint as "Exhibit "A".

7. It does not allege that any evidence of debt was given by the Complainant to the Respondent.

8. Because it does not allege that there was a debt from the Complainant to the Respondent secured by the deed referred to in the Amended Bill of Complaint as "Exhibit "A" which continued after the execution and delivery of the said deed.



Solicitor for Respondent.

J. WALLACE McMILLAN,

Complainant,

VS.

JOHN N. STANDARD,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 130.

MOTION TO REQUIRE FULL AND COMPLETE ANSWERS
TO INTERROGATORIES.

Now comes the Respondent in the above entitled cause, by his attorney, and respectfully represents that he filed written interrogatories to be propounded to the Complainant in this cause on September 28, 1937, a copy of which was served on the Complainant on the said date, and no answers to the said interrogatories were filed by the Complainant in this cause until December 7, 1937, when he filed an instrument whereby he purported to answer the interrogatories but the answers thereto are either not full or are evasive.

WHEREFORE, Respondent moves the Court to either attach the Complainant and cause him to answer the said interrogatories in fully in open court, or tax him with so much costs as may be just, and continue the cause until full answers are made, or direct a non-suit or judgment by default or decree pro confesso, to be entered, or render such judgment or decree as would be appropriate if the Complainant offered no evidence. Movant further prays that such other orders may be made and decrees rendered as may be requisite and proper in the premises.

J. B. Blackburn
Solicitor for Respondent.

*Motion granted as to interrogatories
7 & 13 - This Feb 1st 1938,
J. W. Stace,
Judge*

STATE OF ALABAMA,) IN THE CIRCUIT COURT OF SAID COUNTY,
COUNTY OF BALDWIN.) IN EQUITY, No. 130

TO THE HONORABLE F. W. HARE, JUDGE:-

Humbly complaining, your Orator, J. Wallace McMillan, as Complainant, brings this bill of complaint against John N. Standard, as Respondent, and respectfully shows:

FIRST.

Complainant and respondent are both over the age of twenty-one years and both of them reside in Baldwin County, Alabama.

SECOND.

Complainant has been engaged in business in Baldwin County, Alabama, for many years and through his business operations has accumulated much land, to-wit; eleven thousand acres, including the land hereinafter particularly described, in said County and for many years and until the time of the execution of the deed to the said respondent hereinafter referred to, the Respondent, John N. Standard was Complainant's trusted employee, had full and complete charge of complainant's business records and papers and kept the accounts of complainant including his own account with complainant.

THIRD.

During the year 1933, Complainant's business necessities required him to negotiate a loan for a considerable amount with the Federal Land Bank at New Orleans and Complainant was advised by his then attorney, W. C. Beebe that the amount needed was too large to be made in one application and suggested to complainant that the application be made by three different persons, viz: himself, Complainant, and the Respondent herein, and in order to make the three applications which were to be secured by loans on

Complainant's land, the said Beebe suggested that Complainant make a deed to part of his land to him, the said Beebe, and a deed to part of his land to the Respondent, John N. Standard, and it was agreed between the parties that after the loans were consummated the land would be re-conveyed to complainant and would be thereafter sold by Complainant and out of the proceeds of such sale complainant would pay to the said Beebe and the said Standard the amounts of his indebtedness to them, if any, all of which was explained to the official connected with the Federal Land Bank and was agreed to by him. At the time of the happening of the matters and things herein alleged it was thought that Complainant owed the Respondent herein some amount, although the exact amount was not known, but the idea that he owed the Respondent anything was based on statements made to him by the Respondent and by the records and accounts kept by Respondent for the Complainant. Complainant's health was then and for a considerable while had been very poor. He was unable physically to look after his business, records and accounts personally and left these matters to the attention of the Respondent herein in whose integrity complainant then had full and implicit confidence.

FOURTH.

Acting on the advice of his attorney and the representations made to him by the Respondent herein, the Complainant, without further investigation, executed the deeds, prepared and presented to him by the said W. C. Beebe, one of which was a document in form of a deed to Beebe and one of which was a document in form of a deed to the respondent, John N. Standard, a copy of which deed to the Respondent, Standard, is hereto attached, marked Exhibit "A", and is now referred to and by reference made a part of this paragraph of the complaint, but complainant alleges while the said documents were in form of deeds, they were really intended to be ultimately treated as mortgages to secure whatever sums may be due respondent by the Complainant, and it was thoroughly understood and so agreed by the parties

which is recorded in Book 54 U S page 435 of the Baldwin

that the respondent herein would re-convey the property to the complainant after the said loans were completed to be sold by complainant and that Complainant would, out of the proceeds, pay to the Respondent whatever amount if any complainant was indebted to the respondent for.

FIFTH.

Complainant further alleges that since the happening of the matters and things complained of complainant has, after much difficulty, been able to get back from the Respondent his books and records, has had them audited and examined and he finds and now alleges that at the time he executed the document, Exhibit "A", he was not indebted to respondent in any amount and is not indebted to respondent at this time and he therefore alleges that the deed was without consideration and that its execution was procured by the respondent through fraud and misrepresentation and should be cancelled.

Respondent not refuse to reconvey said property to complainant

The premises considered, Complainant prays that your Honor will take jurisdiction of the cause made by this bill of complaint and that by proper process issued to him from this court the said John N. Standard be made a party respondent hereto and be required to answer the charges herein made in all things as required by the rules and practices of this court.

Complainant further prays that your Honor will, upon the hearing of this cause order, adjudge and decree that the said deed was procured by fraud and that the same be cancelled, or if it should be ascertained that complainant was indebted to the said John N. Standard, the Respondent, your Honor will order a reference to ascertain and determine the amount of said indebtedness and will declare the instrument, copy of which is hereto attached and marked Exhibit "A" to be a mortgage to secure the indebtedness so found to be due and will order and decree that if, within such time as may be named by your Honor in such decree the Complainant does not fully satisfy and pay the said amount, the said mortgage be foreclosed for its satisfaction.

to be determined by a jury

Jury

Complainant prays for such other, further and different relief as in equity and good conscience may be due him in the premises.

B. S. McMillan
SOLICITOR FOR COMPLAINANT.

FOOT NOTE: The Respondent is required to answer each and every allegation and paragraph of the foregoing bill of Complaint, but his oath thereto is hereby expressly waived.

B. S. McMillan
SOLICITOR FOR COMPLAINANT.

Complainant demands a jury to ascertain and determine ⁱⁿ what amount, if any complainant was indebted to the respondent at the time the instrument, copy of which is attached to the bill of complaint as exhibit A, was executed and delivered, and suggests that the trial be had before a regular jury at the next jury term of this court

B. S. McMillan
sol for complt.

EXHIBIT "A"

STATE OF ALABAMA, §
*
BALDWIN COUNTY. §

KNOW ALL MEN BY THESE PRESENTS, that JOHN N. STANDARD, single, first party, in consideration of the sum of FIVE DOLLARS (\$5.00) to him in hand paid by J. W. McMILLAN, second party, the receipt of which is hereby acknowledged, does hereby give and grant to said second party, for a period of two (2) years from date, the right and option to purchase at the price and under the conditions herein set forth, the following described lands situated in Baldwin County, Alabama, to-wit;

That part of the Joshua Kennedy Grant, Section 47, Township 2 South of Range 2 East, which lies in and would be the South half of the North half, the South half of the Northwest quarter of regular Government Section 10, Township 2 South, Range 2 East; and all that portion of said grant which would be that part of the North half of the Southwest quarter and the Northwest quarter of the Southeast quarter of regular Government Section 10, Township 2 South, Range 2 East, lying West of the public road leading from Carpenter Station to Stockton, in Baldwin County, Alabama, as now located, containing 240 acres, more or less; and also all that part of the Robert Wolfington Grant, Section 4, Township 2 South, Range 2 East South of Seabury Creek which lies in and would be the North half of the North half of regular Government Section 10, Township 2 South of Range 2 East, and that part of regular Government Section 3 South of Seabury Creek in regular Government Section 3, Township 2 South, Range 2 East, containing in all 334 acres, more or less, said total acreage of said two tracts being 574 acres more or less.

The purchase price to be paid to first party by second party, in the event he purchase said lands hereunder, shall be Fifty-Nine Hundred Dollars (\$5900.00) with interest thereon, plus any taxes paid by first party, together with 8% interest thereon from date, payable in cash; whereupon first party will execute and deliver to second party a statutory warranty deed conveying said lands.

This option is not transferable without the written consent of the first party.

IN WITNESS WHEREOF, first party has hereunto set his hand and seal, this the 17th day of October, 1933.

JOHN N. STANDARD (SEAL)

STATE OF ALABAMA, §
BALDWIN COUNTY. §

I, W. C. Beebe, a Notary Public in and for said County, in said State, hereby certify that John N. Standard, single, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 17th day of October, 1933.

W. C. BEEBE, (SEAL)
Notary Public, Baldwin County,
Alabama.

J. W. McMILLAN,

Complainant,

VS.

JOHN N. STANDARD,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. _____.

DEMURRERS.

Comes the Respondent in the above entitled cause and for demurrer to the Bill of Complaint in said cause, and to each and every count thereof separately and severally, files the following separate and several demurrers, to-wit:

1. There is no equity in the Bill.
2. Complainant does not offer to do equity.
3. It does not allege that the Complainant is ready, able and willing to pay the Respondent any amount which this Court may find to be due by him to the Respondent.
4. The Complainant, by his Bill, makes no offer to redeem in the event the deed in question is declared a mortgage.
5. Complainant makes no offer to redeem.
6. The Bill contains no allegations whereby the Court can declare the deed in question a mortgage and compel its foreclosure without an offer by the Complainant to redeem.
7. The allegations of "fraud and misrepresentation" as contained in paragraph "Fifth" of the Bill of Complaint, are conclusions of the pleader.
8. No facts are alleged to show the "fraud and misrepresentations" referred to by the Complainant in paragraph "Fifth" of the Bill of Complaint.
9. Because it affirmatively appears from the Bill of Complaint that the Complainant is not in any way indebted to the Respondent.
10. Because it affirmatively appears from the Bill of Complaint that the Complainant was not indebted to the

Respondent at the time the deed in question was delivered.

11. It does not allege any debt to be due and owing by the Complainant to the Respondent.

12. It does not allege that the deed referred to in the Bill of Complaint as "Exhibit A" was intended by both parties thereto as security for a debt.

13. Because it does not allege that the deed referred to in the Bill of Complaint as "Exhibit A" was intended by the Respondent as security for a debt.

14. It does not allege that there is a continuing debt due by the Complainant to the Respondent.

15. It does not allege that any evidence of debt was given by the Complainant to the Respondent.

16. Because it does not allege that the Complainant made the Respondent a tender prior to the commencement of this suit or allege any facts to excuse a tender by Complainant.

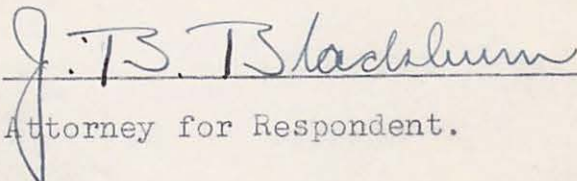
17. It does not allege that Complainant made any offer to the Respondent to purchase the land described in the deed referred to in the Bill of Complaint as "Exhibit A" prior to the commencement of this suit or allege any facts to excuse such failure by the Complainant.

18. Because it does not allege that there was a debt from the Complainant to the Respondent secured by the deed referred to in the Bill of Complaint as "Exhibit A" which continued after the execution and delivery of the said deed.

19. Because it affirmatively appears that the Complainant does not come into equity with clean hands.

20. Because it is multifarious.

21. Because it is multifarious in that the relief asked for is inconsistent.


Attorney for Respondent.

RESPONDENT'S BRIEF IN SUPPORT OF DEMURRER TO
BILL OF COMPLAINT AS LAST AMENDED.

The Respondent's Demurrer in this case is directed to the Amended Bill of Complaint as a whole and to each and every part thereof separately and severally, the grounds of demurrer in each case being the same.

One or more of the grounds of Respondent's Demurrer raise each of the following points:

POINTS AND AUTHORITIES.

1. He who seeks equity must do equity.

Allgood v. Bank of Piedmont,
115 Ala. 418.
22 So. 35.
Coburn, et al, v. Coke, et al,
193 Ala. 364.
69 So. 574.

2. A deed is but an executed contract of sale.

Blackmon v. Quennelle,
189 Ala. 630.
66 So. 608.

3. There can be no partial rescision of a contract.

A party thereto must affirm or disaffirm in toto.

Americanized Finance Co., v. Yarborough.
135 So. 448. 223 Ala. 266.
Thompson v. Fourth National Bank,
108 So. 69. 214 Ala. 452.

4. Where a party to a sealed instrument elects to treat a part of the instrument as valid, he is bound by all of its provisions and cannot set up fraud to defeat any single one of its provisions.

Blackmon v. Quennelle, *supra*.

5. Fraud renders a contract voidable and gives the defrauded party thereto the right to restore the benefits received and rescind the contract, or affirm the contract and sue for damages. This rule prevails in Courts of law as well as equity.

Americanized Finance Corp. v. Yarborough,
135 So. 448, 223 Ala. 266.
B. R. L. & P. Co. v. Jordan, 54 So. 280,
170 Ala. 530.
Stephenson v. Allison, 26 So. 290, 123 Ala. 439.
Bankers Mortgage Bond Company v. Rosenthal,
145 So. 456. 226 Ala. 135.
Southern Building and Loan Association v. Bryant.
144 So. 367. 225 Ala. 527.
Moore v. Oneonta Motor Co., 137 So. 301,
223 Ala. 510.

6. It is essential to the creation of a vendor's lien that there be a definite ascertained absolute debt owing alone for the purchase price of the land conveyed.

Burroughs v. Burroughs, 50 So. 1025.
164 Ala. 329.

7. Fraud itself is never a distinctive ground for equity jurisdiction and where a wrong can be compensated in money an action at law affords an adequate remedy and equity is without jurisdiction unless some independent matter of equitable cognizance is shown.

Hunt v. Jones 203 Ala. 536, 84 So. 718.

8. Undue influence or sickness to render a deed void must be such as to deprive the party of his free agency.

Noel v. Noel, 155 So. 362. 229 Ala. 20.
18 C. J. 222.

9. Where a bill shows that the interests of an omitted party are such as to be directly affected by the granting of the

of the relief sought he is a necessary or indispensable party and the bill is subject to general demurrer.

Phillips v. Threadgill, 37 Ala. 93.
21 C. J. 325, par. 314.

POINTS, ONE TO FIVE.

For the sake of brevity and as the first five points referred to above are somewhat similar, we will attempt to discuss these five points together.

According to the allegations of the Bill of Complaint as Last Amended there was but one contract between the parties to this suit. That contract was one whereby the complainant agreed to and did sell to the respondent the lands which are now in question and made conveyance to him by Warranty Deed for a consideration which is not clearly or definitely stated in the Amended Bill of Complaint. According to the allegations of the Amended Bill of Complaint this consideration was paid partly by the cancellation of the debt due the respondent by the complainant, partly by moneys received by the respondent from the Federal Land Bank on a mortgage given respondent to the Federal Land Bank which moneys were paid to Complainant, leaving, according to the said allegations a balance still due even though the Complainant, in his deed, acknowledged receipt of the entire consideration. This contract became an executed contract of sale when the Complainant executed and delivered the deed referred to above conveying these lands to the Respondent because a deed is but an executed contract of sale. (Blackmon v. Quennelle, supra).

Each item or part of the consideration for this said

deed as shown by the Amended Bill of Complaint is but a part of the executed contract of sale between the Complainant and Respondent and must not be confused with the main transaction or contract, and if Complainant has been defrauded, this fraud goes to the entire contract and not to any item or part thereof.

It is obvious that the Complainant cannot proceed with his Amended Bill of Complaint in its present form. It is an elementary principle of law that a party to a contract must affirm or disaffirm the contract in toto. He will not be allowed to hang on to that part of the contract which benefits him while he, on the other hand, refuses to be bound by that part of the contract which is burdensome. The following quotation from the case of Americanized Finance Corporation v. Yarborough illustrates this point:

"In B. R. L. & P. Co., v. Jordan, 170 Ala. 530, 537, 54 So. 280, 282, Mr. Chief Justice Anderson says: "The person who would disaffirm a fraudulent contract must return whatever he has received under it. This is on a plain and just principle. He cannot hold on to such part of the contract as may be desirable on his part and avoid the residue, but must rescind in toto, if at all. Stephenson v. Allison, 123 Ala. 439, 26 So. 290. This rule prevails in courts of law as well as equity, and applies to releases like the one in question. Harrison v. Ala. Midland R. R. Co. 144 Ala. 256, 40 So. 394. (6 Ann. Cas. 804) Kelly v. L. & N. R. R. Co. 154 Ala. 576, 45 So. 906; Birmingham R. R. Co. v. Hinton, 158 Ala. 470, 48 So. 546."Americanized Finance Corporation v. Yarborough, 135 So. 151.

It will be noted from reading the Amended Bill of Complaint that the Complainant has, by the allegations thereof, attempted to place himself in a position whereby he can hang on to the benefits received under the contract; that is, the large cash payment which he has received, while he refuses to be bound by any other part of it. In electing to treat a part of the instrument as valid he immediately places himself in apposition where he is bound by all of its provisions:

"So long as a party to a sealed instrument elects to treat a part of the instrument as valid he is bound by all of its provisions and cannot set up fraud to defeat any single one of its provisions." (Blackmon v. Quinnelle, supra)

Because of the two foregoing rules the Complainant finds himself in a position where he is directly faced by the rule cited in Point Five of this Brief. That is, he has the right to restore the benefits received under the contract and rescind it or affirm the contract and sue for damages. He cannot do both. Of course, if he elects to rescind the contract he must offer to do equity and restore to respondent the large benefits which he, the complainant has received under the contract. The rule referred to in Point Five is such an elementary proposition that we deem it unnecessary to burden the Court with a lengthy discussion of it. The one quotation set out above from the case of Americanized Finance Corporation v. Yarborough shows what is unquestionably the law in the case and we only desire to again call the Court's attention to the authorities cited under Point Five. In this connection had it not been for burdening the Court with a lengthy brief we could have cited fifty case to illustrate the point instead of the few referred to above.

If the Complainant elects to affirm the contract and sue for damages it will not be necessary for him to offer to do equity, but if he elects to rescind the contract he must then restore or offer to restore the benefits received by him under it and as he, by his Amended Bill of Complaint, attempts to in a measure, disaffirm he must offer to do equity. That is, he must offer to restore the large cash payment that he has received and must at the same time place the respondent in statu quo. I am sure that the Court will notice on reading the Bill of Complaint

that it is impossible to tell therefrom just what is the status of the indebtedness secured by the mortgage from the respondent to the Federal Land Bank. We have the right to construe the allegations of the Amended Bill of Complaint most strongly against the pleader and for aught that appears therein we can assume that the entire indebtedness secured thereby has been paid by the Respondent. If this is not the case when the Respondent executed the note secured by this mortgage he placed himself in a position where a deficiency judgment may ultimately be rendered against him if the indebtedness is not paid. Regardless of the form that the Court's decree may finally take in this case the Respondent cannot be relieved of the danger of a deficiency judgment in litigation where the Federal Land Bank is not made a party. In offering to do equity the Complainant cannot therefore avoid the responsibility that now rests upon him to offer to place the Respondent in statu quo.

He who seeks equity must do equity. In this case the Complainant has wholly failed to do equity, or offer to do it, and when there is this defect in a bill that is clearly pointed out by demurrer, the bill is defective.

Allgood v. Bank of Piedmont,
Coburn, et al, v. Coke, et al, supra.

POINT NUMBER SIX.

It is essential to the creation of the vendor's lien that there be a definite absolute debt owing alone for the purchase price of the land conveyed. The Court will, on reading the Amended Bill of Complaint in this cause, immediately discover

that the allegations thereof in so far as they are very
consideration for the deed that is now in are very
vague and indefinite. In fact they are and indefinite
that there is only one positive statement that is, the state-
ment that Respondent still owes the complainant a balance of
\$1,000.00. If the averment relative to the balance of \$1,000.00
which the Complainant claims to be denied by the Respondent,
stood alone, clearly the bill would not be subject to demurrer,
on this ground, but when he couples this balance with the other
vague and indefinite allegations referred to above we think
that the rule laid down in the following case will govern:

"We think there can be no doubt that one essential con-
dition to the creation of a vendors' lien is that there is a de-
finite, "ascertained, absolute debt, owing alone for the purchase
price of the land conveyed;" on the contrary, that no such lien
arises where the consideration for the conveyance is an uncertain,
indefinite, contingent demand. - 3 Pom. Eq. par. 1250, 1251, and
authorities cited in notes thereto. Under this doctrine, the
complainant, as upon the averments of the bill, had nor has a
vendor's lien. No debt, ascertained and definite, was created by
the agreement between the parties as for the sale and conveyance
of the land. Her remedy was "on the undertaking" as Garner v.
Knight, 124 Ala. 273, 274, 27 South. 298, adjudges." (Burroughs v.
Burroughs, supra).

POINT SEVEN.

From the allegations of the Amended Bill of Complaint
we believe that it fully appears that the Complainant has an
adequate remedy at law because fraud itself is never a distinctive
ground of equity jurisdiction; that is, it is never of itself a
foundation which will uphold a bill in equity and is on the con-
trary in many cases cognizable in a court of law. The Amended
Bill of Complaint does not contain any allegation to show that
the wrong complained of cannot be compensated in money, consequentl
equity is without jurisdiction unless some independent matter of

equitable cognizance is shown.

"Fraud of itself is never a distinctive ground of equity jurisdiction; that is, it is never, of itself, a foundation which will uphold a bill in equity. On the contrary, fraud is, in many cases, cognizable in a court of law." Smith's Ex'r v. Cockrell, 66 Ala. 77; Williams, et al v. Neal, et al, 152 Ala. 435, 44 South. 551; 24 R. C. L. p. 363 Sec. 653.

* * * * *

"It has likewise been held, where a wrong can be compensated in money and an action at law affords an adequate remedy therefor, a court of equity is without jurisdiction, unless some independent matter of equitable cognizance is shown. Ashurst v. Ashurst, 175 Ala. 667, 57 South. 442; Gulf Compress Co. v. Harris, etc. Co. 158 Ala. 343, 48 South. 477, 24 L. R. A. (N. S.) 399; Gulf Compress Co. v. Sykes-Tweedy & Co. 159 Ala. 669, 48 South. 481; Gulf Compress Co. v. Jones Cotton Co. 159 Ala. 670, 48 South. 481; 5 Ency. Dig. Ala. Rep. 478. (84 So. 719, Hunt v. Jones)

POINT EIGHT.

Complainant has had much to say about his sickness and his weakened physical condition but does not allege that the undue influence of his sickness was such as to deprive him of his free agency. This is an essential averment.

"To render a deed void undue influence must deprive one of his free agency. Smith v. McHenry, 111 Kan. 659, 207 P. 1108; Linn, as Guardian v. Blanton, 111 Kan. 743, 208 P. 616; Verner v. Mosley, 221 Ala. 36, 127 So. 527; Kelly v. Tatum, 222 Ala. 655, 133 So. 703; Stroup v. Austin, 180 Ala. 240, 60 So. 879; Abrams v. Abrams 225 Ala. 622, 144 So. 828; Horticultural Development Co. v. Schneider, 225 Ala. 667, 145 So. 135; Schwab v. Carter, 226 Ala. 173, 145 So. 450. (Noel, et al. v Noel. 155 So. 363).

POINT NINE.

On reading the Amended Bill of Complaint the following statement will be observed: "During the year 1933 before the document hereinafter referred to as "Exhibit "A" was executed, it became necessary for Complainant to raise a considerable sum of money and Complainant attempted to negotiate a loan with the Federal Land Bank of New Orleans, but was unable to borrow from it the amount due." It will be noted from this allegation that

for some reason or other which is not stated the Federal Land Bank refused to make Complainant a loan and certainly it had a right to say who should become indebted to it on a mortgage, consequently, if it for just cause refused to make the Complainant a loan and later made such a loan to the respondent, the Mortgagee, the Federal Land Bank, should not now have the Complainant substituted for the Respondent as the one who owes the Federal Land Bank, especially in litigation to which it is not made a party, particularly when the mortgage given by Standard to the Federal Land Bank, which is already before the Court, contains an allegation that the Mortgagor, the Respondent, Standard, cannot convey the land without the consent of the Mortgagee, the Federal Land Bank. Therefore, we respectfully insist that the Federal Land Bank is both a necessary and indispensable party because it will be directly affected by the granting of the relief sought in this case. (Phillips v. Threadgill, supra).

CONCLUSION.

The Complainant has, in the brief which he furnished the Court, attempted to excuse his failure to offer to do equity by citing the case of Ivy v. May which was tried by this Court and with which the Court is of course entirely familiar. It will be remembered that in that case the bill was filed by the next friend of an insane person and because the party defrauded in that case was an insane person, the same rule does not apply.

Complainant has also cited the case of Morgan v. Gaiter (202 Ala. 492) as another authority for his failure to offer to do equity, but in that case we find the following:

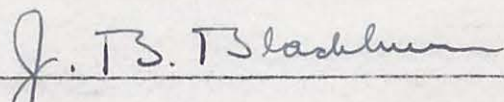
"The bill discloses that the complainant has received

\$50.00, when he was entitled to more than \$1,400, and complainant expressly submits himself to the jurisdiction of the court and offers to make such payment to respondent as may be decreed by the court. Relief is sought on the ground of fraud. The bill is not subject to demurrer for failing to allege an offer on the part of complainant to restore to respondent the sum so received before filing the bill. *Martin v. Martin*, 35 Ala. 560; *Perry v. Boyd*, supra; *King v. Livingston Mfg. Co.*, 192 Ala. 269, 68 South. 897; 6 Cyc. 311-2." (*Morgan v. Gaiter*, 202 Ala. 495).

This quotation shows that there was an offer to do equity in that case, therefore it is not in point.

We respectfully insist that the only proper decree in this case is a decree sustaining Respondent's demurrer.

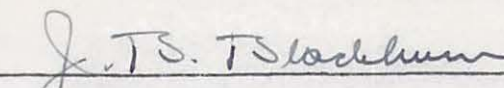
Respectfully submitted,



Solicitor for Respondent.

I hereby certify that I mailed a copy of this Brief to Honorable B. F. McMillan, Jr., Solicitor for the Complainant, Van Antwerp Building, Mobile, Alabama, on December 14, 1937, by mail, postage prepaid.

Dated this 14th day of December, 1937.



Solicitor for Respondent.

J. WALLACE McMILLAN,
Complainant,
VS.
JOHN N. STANDARD,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. ____.

MOTION TO STRIKE.

Now comes the Respondent in the above entitled cause and moves to strike the Amended Bill of Complaint filed by the Complainant in this cause on June 11, 1937, and as grounds therefor sets down and assigns separately and severally the following:

1. It is unnecessarily prolix.
2. It is irrelevant.
3. It is frivolous.
4. It was filed without the Court's permission while the cause was under submission on demurrer.

J. B. Blackburn

Solicitor for Respondent.

J. W. McMILLAN,

Complainant,

VS.

JOHN N. STANDARD,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. 130.

DECREE ORDERING SUBSTITUTION OF LOST PLEADINGS.

It appearing to the Court that the original first Amended Bill of Complaint filed by the Complainant in this cause on August 31, 1935, and the original second Amended Bill of Complaint filed by the Complainant in this cause on February 3, 1936, have each been lost or misplaced and that the solicitors for the respective parties have requested the Court to order copies thereof filed in the place of the said lost originals:

IT IS THEREFORE Ordered, Adjudged and Decreed by the Court that certified copies of the two said lost pleadings be and the same are hereby ordered filed and substituted in place of the said lost originals.

Dated this 27th day of August, 1937.

A. W. Hare
Judge.

Duck
2-3-19

DECREE ORDERING SUBSTITUTION
OF LOST PLEADINGS.

J. W. McMILLAN,
Complainant,

VS.

JOHN N. STANDARD,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 130.

...the original bill in the case of the said lost original
...the respective parties have requested the Court to order
...have each read lost or misplaced and that the following
complaint filed by the complainant in this cause on February 2,
on March 21, 1922, and the original second amended bill of
amended bill of complaint filed by the complainant in this cause
is appealing to the Court that the original bill of

DECREE ORDERING SUBSTITUTION OF LOST PLEADINGS.

Respondent.

JOHN N. STANDARD,

IN EQUITY. NO. 130.

Complainant.

J. W. McMILLAN,

BALDWIN COUNTY, ALABAMA.

IN THE CIRCUIT COURT OF

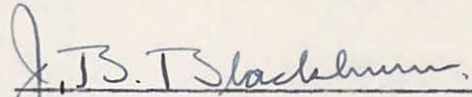
J. W. McMILLAN,
Complainant,
VS.
JOHN N. STANDARD,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 130.

MOTION TO STRIKE.

Comes the Respondent in the above entitled cause and moves the Court to strike that part of the Complainant's Amended Bill of Complaint in which he demands a trial of said cause by jury, for the following separate and several reasons, to-wit:

1. Because it is not a matter of right.


Solicitor for Respondent.

TO MR. B. F. McMILLAN, JR., SOLICITOR FOR J. WALLACE McMILLAN:

You are hereby notified that the attached Motion has been set down for hearing before the Honorable F. W. Hare, Judge of the Twenty-first Judicial Circuit, at Bay Minette, Alabama, on Thursday, February 25, 1937.

Dated this 23rd day of February, 1937.

J. B. Blackburn
Solicitor for Respondent.

I acknowledge that a copy of
the foregoing was delivered
to me this 23rd Feb 1937

B. F. McMILLAN, JR.
Solicitor for Plaintiff

2/25/37: Submitted briefs to be furnished
in 15 days - F. W. Hare

J. WALLACE McMILLAN,
Complainant,
VS.
JOHN N. STANDARD,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 130.

MOTION.

TO THE HONORABLE F. W. HARE, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

Now comes John N. Standard, the Respondent in the above entitled cause, and respectfully shows unto the Court and your Honor, as follows:

1. It appears from the allegations of the Bill of Complaint in the above entitled cause as last amended that the Complainant recognizes and in a measure states, that there is a mortgage in existence to the Federal Land Bank, of New Orleans, a Corporation, covering the same property as that described in the deed attached to the said Amended Bill of Complaint and marked Exhibit "A".

2. There is a mortgage in existence from John N. Standard to the Federal Land Bank, of New Orleans, a Corporation, which covers and conveys the same property as that described in the deed attached to the said Bill of Complaint as last amended and marked Exhibit "A" which said mortgage is dated January 13, 1934, and recorded in Book Number 57 of Mortgages at pages 562-65 Baldwin County Records, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof as though fully incorporated herein, which was given to secure an indebtedness of \$3400.00 and interest which said mortgage is now in full force and effect and is not fully paid, the net proceeds of which were paid to and received by J. Wallace McMillan, the Complainant in this cause who gave his receipt therefor on to-wit, the 22nd day of January, 1934, a copy of which is hereto attached, marked Exhibit "B" and made a part hereof as though fully incorporated herein. No part of the indebtedness secured by said mortgage has been paid by the Complainant or any person other than this Respondent.

EXHIBIT "A"

F.L.B. Form No. 613.

DIRECT LOAN
MORTGAGE

STATE OF ALABAMA,

BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS

THAT WHEREAS JOHN N. STANDARD (single), hereinafter called the Grantors, whether one or more is/are indebted to THE FEDERAL LAND BANK OF NEW ORLEANS, in the sum of THREE THOUSAND FOUR HUNDRED and No/100 DOLLARS, for money lent by it, which indebtedness and the interest accruing thereon, at the rate of 5½ per centum per annum from the date hereof, is repayable in 40 semi-annual installments, according to amortization tables approved by the Land Bank Commissioner, the terms of which are hereby agreed to, in varying amounts and at times as follows, to-wit:

On the 1st. day of July, 1934, the first installment, comprising interest from date hereof on the principal amount of such indebtedness, plus the principal portion of the said first installment of the amortization table which is printed on the back of the note hereinafter described and herein secured; and the remaining installments successively, including principal and interest, one every six months thereafter on the 1st. day of January and on the 1st. day of July of each year, until all have matured; on an amortization plan, in the order and in the several respective amounts as the same are set forth in, and fully in accordance with, the amortization table printed on the back of the note hereinafter described with this mortgage, the terms of which are hereby accepted and made a part of this mortgage, to the same extent as if the said note, including the said amortization table, were recited verbatim herein. Said indebtedness repayable in said ~~semi~~ annual installments is evidenced by a note of even date herewith, for the said principal sum, which, with the interest therein provided, is payable in the amounts and at the times aforesaid, at the office of The Federal Land Bank of New Orleans, in the City of New Orleans, Louisiana.

Now, therefore, in order to secure the prompt payment of the indebtedness hereby secured and the performance of the covenants and agreements herein made and all obligations assumed I, the said John N. Standard (single) hereinafter called the Grantors, whether one or more, for and in consideration of the premises, and the sum of Five Dollars to us this day in hand paid by the said THE FEDERAL LAND BANK OF NEW ORLEANS, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey, unto the said THE FEDERAL LAND BANK OF NEW ORLEANS, its successors and assigns, the following described real estate lying and being situated in the County of Baldwin, in the State of Alabama, to-wit:

That part of the Joshua Kennedy Grant, Section 47, Township 2 South of Range 2 East, which lies in and would be the South Half of the North half of Regular Government Section 10 Township 2 South of Range 2 East; and all that portion of said Grant which would be that part of the North Half of the Southwest Quarter and Northwest Quarter of Southeast Quarter of Regular Government Section 10, Township 2 South of Range 2 East, lying West of Public Road leading from Carpenter Station to Stockton in Baldwin County, Alabama, as now located, containing 240 acres more or less; And also all that part of the Robert Wolfington Grant, Section 4, Township 2 South of Range 2 East, South of Seaberry Creek which lies in and would be the North Half of North Half of regular Government Section 10, Township 2 South of Range 2 East, and that part of regular Government Section 3, South of Seaberry Creek in Regular Government Section 3, Township 2 South of Range 2 East, containing in all 334 acres, more or less; said total acreage of said 2 tracts being 574 acres, more or less; in Baldwin County, Ala, except a certain tract of land beginning at Southeast corner of Southeast Quarter of Northwest Quarter Section 10, Township 2 South of Range 2 East running North 33 feet to a post, thence East 267 feet to a post thence North 102 to a post, thence East 374 feet to a post. thence South 213 feet to

thence West 374 feet, thence North 78 feet, thence West 267 feet to point of beginning, containing 2 acres.

TO HAVE AND TO HOLD the aforegranted premises, together with the improvements and appurtenances thereunto belonging, unto the said The Federal Land Bank of New Orleans, its successors and assigns forever.

The Grantors do covenant with the said The Federal Land Bank of New Orleans, hereinafter called MORTGAGEE, its successors and assigns, that Grantors are lawfully seized in fee of the aforegranted premises; that they are free from all encumbrances; that Grantors have a good right to sell and convey the same to the said Mortgagee, its successors and assigns, and that Grantors will warrant and defend the said premises to the said Mortgagee, its successors and assigns, forever against the lawful claims and demands of any person or persons, whomsoever.

BUT THIS CONVEYANCE IS MADE UPON THE FOLLOWING TERMS, STIPULATIONS AND CONDITIONS, namely:

1. That Grantors will promptly pay each one of said semi-annual installments at its maturity, as well as all other lawful debts and charges hereby secured, at the respective maturity of same, expressly guaranteeing collection of all checks and drafts given in payment, and receipt of cash therefrom at the home office of the Bank of New Orleans, Louisiana, and assuming all risks connected therewith.

2. That Grantors will, during the term of this mortgage, duly assess said real estate for taxation at the time prescribed by law, and will pay, before they become delinquent, all taxes, liens, judgments and assessments lawfully levied against said real estate, and will furnish to said Mortgagee or to the holder of the indebtedness secured hereby, on or before January first, of each year, the receipts showing such payment, and will allow no payment of any taxes, liens, judgments or assessments by a third person with subrogation attaching.

3. That Grantors will keep the buildings and other insurable improvements, now or hereafter erected on said premises, insured against loss or damage by fire and/or windstorm in such sums as may be reasonably required by the Mortgagee, but not exceeding the amount of the indebtedness hereby secured, such insurance to be in responsible insurance companies, designated or approved by said Mortgagee, with loss payable to the Mortgagee as its interest may appear; and Grantors will promptly pay when due all premiums for any such insurance, and will deliver said policies of insurance, and any other insurance policies covering the premises herein described, to the said Mortgagee. Should any loss by fire or windstorm occur to such insured improvements, the said Mortgagee is hereby appointed attorney-in-fact for Grantors to make proof loss if Grantors fail to promptly do so; and to receipt for any sums so due from any insurance company under said policies, which said sums so receipted for may, at the option of the Grantors and subject to general regulations of the Land Bank Commissioner, be applied as payment of the indebtedness hereby secured, or be used to pay for the reconstruction of the improvements destroyed or injured.

4. Should the Grantors fail to pay as hereinabove stipulated, all taxes, assessments, liens or judgments; or, when due, any other charges or amounts of any kind herein assumed and to be paid by the Grantors, or to insure the property and pay the premiums therefor, then the said Mortgagee, its successors and assigns, may at its pleasure, either pay or not pay any such unpaid taxes, charges, assessments, liens or judgments and insure, or not insure, said improvements, pay the premium therefor, and whether or not it makes any such advances, it may, without notice, at its option, declare the whole debt secured by this mortgage to be due and payable and proceed to foreclose at once. All taxes, assessments, liens, judgments and insurance premiums paid by the said Mortgagee, and all necessary expenses incurred in connection therewith, including any expenses

incurred in defending the title of the Grantors to this real estate, where necessary in the opinion of the Mortgagee for the protection of its interest; or, in defending this mortgage as a valid first lien on the real estate described or intended to be described herein, where necessary in the opinion of the Mortgagee; or, in seeking to have this mortgage reformed by judicial proceedings, where necessary in the opinion of the Mortgagee because of mistake, shall constitute a part of the debt secured by this mortgage and become immediately due and payable to the said Mortgagee.

5. That Grantors will take good care of said real estate and will not commit waste, nor allow waste to be committed on same, but will cause the same to be worked and cultivated in a proper and farmerlike manner at all times; and will not cut nor remove any timber or other improvements from said land, except such timber as may be needed for Grantors ordinary farm purposes, and, further, will keep the houses, fences, ditches, terraces and other improvements on said land in good condition and repair at all times, whether such improvements are now existing or hereafter constructed on said land. If these conditions, or either of them, shall ever be violated in any way, which in the sole discretion of the holder of the indebtedness, shall require a physical examination of the real estate to determine the amount of waste committed or timber removed, the Grantors agree to pay all expenses of such examination at once, and the same, if paid by the holder of the indebtedness, is to be a part of the indebtedness hereby secured. In the event timber, beyond that required for ordinary farm purposes, shall ever be cut and/or removed from the real estate herein conveyed, or otherwise damaged in any way; or, in the event waste in any other manner or form shall ever be committed on or against the property herein conveyed, by whomsoever, and whether with or without Grantors knowledge and consent, but without the consent of the Mortgagee, given in writing duly authorized, the Grantors hereby unconditionally agree, in any such event, to pay all costs and charges, including a reasonable attorney's fee, which, in the judgment of the Mortgagee may be necessary or desirable to be expended in its own interest as the holder of this mortgage, (1) in prosecuting any right of action which it may have, in such event, against whomsoever, either in law or in equity, as a result of any such damage to any of the property included within the provisions of this mortgage; or (2) in making application for and obtaining injunction to restrain waste or other damage; or (3) in employing an Attorney for any other purpose which to the Mortgagee seems necessary or desirable in such connection, whether or not suit shall be filed where the security of this mortgage may be in any way impaired. The Mortgagee may incur and pay these charges at its own discretion, based on its own investigation, and such charges shall at once become a part of the indebtedness secured by this mortgage and shall be due and payable to the mortgagee on demand. Such rights and remedies in favor of the Mortgagee shall be cumulative and in addition to any other rights herein conferred in the premises.

6. Grantors expressly agree not to sell, lease or otherwise dispose of or effect the oil, gas or other minerals on or under said property, or any mineral rights connected therewith or thereunto appertaining; nor will he grant any servitude or other privilege of any kind thereon or permit the exploration or exploitation of said property for oil, gas or other minerals; and he does hereby assign, set over and convey to The Federal Land Bank of New Orleans, all and every one of the rights, benefits, privileges and gains whatsoever that shall accrue to him under any and all oil or mineral leases or sales or other contracts now extant and affecting said mortgaged property or the minerals on or underlying same.

7. That Grantor will expend the whole of the loan hereby secured for the purposes specified in the application for said loan. The conditions precedent or as conditions subsequent, is hereby referred to in its entirety and is hereby incorporated as a material part of this contract, to the same extent as if such application, including all memoranda endorsed thereon by the Mortgagee, were fully written out in words and figures herein and the Grantors

now again declare that all representations made in such application are true and correct; and that all conditions made by the Mortgagee, and imposed as conditions precedent to the granting of this loan, have been met in full; and that, as to conditions subsequent, due performance of such conditions will be fully made at the earliest time possible, and, at all events, within a reasonable time; the Grantors herein acknowledging due notice and cognizance of any conditions of any kind that have been imposed by said Mortgagee in this case, and furthermore, declaring that a breach of the truth, as to any representation, or a failure to perform, as to any conditions imposed, shall be considered a material breach of this contract, and for any violation of such representations or conditions, precedent or subsequent, the Mortgagee, its successors or assigns, is fully authorized and empowered to declare the indebtedness secured hereby due and payable and to advertise and sell the property hereby conveyed in the manner herein provided.

8. That any installment or other indebtedness hereby secured, unpaid at maturity, shall thereafter bear interest at the rate of 8% per annum.

9. That Grantors will not sell or convey the land herein mortgaged, or any part thereof, or any interest therein without the consent of the Mortgagee given in writing.

10. In case the Grantors, or any subsequent owner or owners of said lands, or portion thereof, who have assumed the obligations of this Mortgagee shall become insolvent or apply to a Bankruptcy Court to be adjudicated a voluntary bankrupt, or should proceedings be instituted to put the Grantors or any subsequent owners in involuntary bankruptcy; or should any proceedings be taken against said Grantors or any subsequent owner or owners, or either of them, looking to the appointment of a receiver, assignee, or trustee, then, in either or any such case, the whole indebtedness hereby secured shall, at the option of said Mortgagee or any holder or holders of said indebtedness, be declared fully due and payable and this mortgage may be foreclosed.

11. The Grantors agree to pay all necessary and usual charges incident to the consummation of this loan and likewise the usual and necessary costs incident to the record cancellation of this mortgage after the loan has been paid in full.

12. It is understood and agreed that this mortgage and the note secured hereby are executed in accordance with and shall be governed by and construed under the provisions of the Federal Farm Loan Act, and the Laws of the State of Alabama not in conflict therewith, without regard to where the mortgage or note may be executed or delivered.

13. The Grantors -- do -- do not -- hereby covenant and agree that, whenever there are ten or more borrowers (including Grantors) who have obtained from the Mortgagee direct loans under the provisions of Section 7 of the Federal Farm Loan Act, as amended, whose loans aggregate not less than \$20,000.00 and who reside in a locality which may, in the opinion of the Land Bank Commissioner, be conveniently covered by the charter of and served by a National Farm loan association, the Grantors will unite with such other borrowers to form a National farm loan association and together with such other borrowers, or any of them, will organize such association subject to the requirements and conditions specified in Section 7 of the Federal Farm Loan Act, as amended, so far as the same may be applicable, and in accordance with the rules and regulations of the Land Bank Commissioner.

14. In event of public sale hereunder, the said Mortgagee, its successors and assigns, agents and attorneys, are hereby authorized and empowered to purchase the said property the same as if they were strangers to this conveyance, and the auctioneer or person making the sale is hereby empowered and directed to make and execute a deed to the purchaser in Grantors' names.

15. The Mortgagee may at any time, without notice, release portions of said mortgaged premises from the lien of this mortgage without affecting the personal liability of any person for the payment of said indebtedness or the lien of this Mortgage upon the remainder of the mortgaged premises for the full amount of said indebtedness than remaining unpaid.

16. The failure of the Mortgagee or any future holder or holders of said indebtedness to exercise any option to declare maturity of the principal debt or any other sums hereby secured under any of the covenants or stipulations herein expressed, or procurement of insurance or payment of taxes as herein provided, shall not be considered or deemed a waiver of the right to exercise such option or declare such maturity as to such past or any subsequent violation of any of said covenants or stipulations.

17. Grantors further specially waive all homestead and other exemptions which such Grantors have or to which such Grantors may be entitled under the Constitution and Laws of Alabama or of any other State in regard to the collection of the above debt.

18. It is further expressly agreed that if, after the execution of this mortgage, the loan applied for and hereby secured shall, for any reason not the fault of the Mortgagee herein, fail to be closed and negotiated, then Grantors herein, before requesting statutory cancellation of this mortgage, agree to pay to the said Mortgagee the nominal sum of TWO AND 50/100 (\$2.50) DOLLARS, to partially reimburse the said Mortgagee for the labor and expense to which it was put in examining the abstract and preparing the papers for execution.

19. It is further agreed and understood, as a part of the consideration for this mortgage, that, on its fifth anniversary, the said Grantors, their heirs or assigns, may pay off the indebtedness secured in full, or, thereafter on the day when any one of the regular semi-annual installments falls due, as described herein, may pay off the indebtedness hereby secured, either in whole or in part; but, if in part only, then each such partial payment shall be in such an amount as will pay the principal portion or portions of a specific number of the semi-annual installments, as said installments are described and set forth on the back of the note secured by this Mortgage. Each such partial payment, if and when made, shall have the effect of advancing the respective maturity dates of the remaining unpaid installments thereafter falling due, by a period of time exactly corresponding in number of years to the number of the specific installments so paid up in advance; so that the final installment will mature and the loan will be satisfied at an earlier date than will otherwise be the case if no such partial payment or payments shall be made.

20. All the rights and protective conditions herein conferred upon said Mortgagee shall inure to the benefit of its successors and assigns and to the owner or holder of the indebtedness hereby secured.

Now, if said Grantors shall pay when due every installment of the indebtedness hereby secured and shall faithfully and promptly keep and perform each and every one of the covenants and agreements herein made and the obligations hereby assumed, and keep the warranty of the title to all of the lands herein described by immediately clearing any cloud on any portion of same within ten days after receipt or distribution of the money hereby loaned and secured, then this instrument shall become null and void but otherwise shall remain in full force and effect. If the Grantors fail to pay any amortization installment when due or fail faithfully and promptly to keep and perform any one of such covenants, obligations and agreements, and to keep and make good the warranty of the title to the lands herein described as hereinabove provided for, then the Mortgagee, its successors and assigns, may at its option and its option only, declare the entire indebtedness hereby secured, together with the interest thereon, to be immediately due and payable; in which event, the said Mortgagee, its successors and assigns, agents or attorneys, are hereby authorized and empowered to sell the said property hereby conveyed, at auction, for cash, at the Court-house of the said County in which said land is situated, in the city

or town of said County, where the court having jurisdiction is situated, first having given notice thereof by publication once a week for three weeks in any newspaper then published in said county; if the lands hereby conveyed lie in more than one County, the sale of all of said lands may be held at the Courthouse of any one of the counties wherein any portion of said lands lie after publication once a week for three weeks of the time, place and terms of sale in some newspaper published in each of the Counties wherein any portion of said lands lie, and execute proper conveyance to the purchaser; and out of the proceeds of said sale they shall first pay all expenses incident thereto, together with a reasonable attorney's fee, then retain enough to pay said indebtedness and interest thereon, together with any other debt incurred or secured under the provisions of this instrument, and the balance, if any, pay over to the Grantors. The Grantors hereby agree that the right to collect the attorney's fee and all expenses incident to the collection of the indebtedness hereby secured shall accrue in any event not later than when direction to foreclose may be sent forward by mail or otherwise to the attorney selected for that service by the said Mortgagee. And it is also agreed that in case the Mortgagee herein, its successors and assigns, or attorneys, see fit to foreclose this mortgage in a court having jurisdiction thereof, then Grantors will pay a reasonable attorney's fee therefor, which fee shall be and constitute a part of the debt hereby secured.

In case default is made hereunder and the entire indebtedness declared due and payable, the grantors warrant that they will peaceably surrender actual physical possession of all of the property hereinabove described to the mortgagee, its successors, assigns, on demand; should Grantors fail so to do and legal proceedings are instituted and successfully prosecuted by the Mortgagee, its successors and assigns, or by the purchaser at any foreclosure sale, for the possession of said property, Grantors agree to at once fully reimburse and indemnify such party so instituting and prosecuting such litigation for all expenses incurred in so doing, whether such expenses be incurred before or after foreclosure; and any such expense so incurred shall become a part of the mortgage debt.

IN TESTIMONY WHEREOF, we, the said Grantors, have hereunto set our hands and affixed our seals, this 13th day of January, A. D., 1934.

John N. Standard L. S.

STATE OF ALABAMA
BALDWIN COUNTY.

I, W. C. Beebe, a Notary Public, in and for said State and County, hereby certify that John N. Standard, ^{single} whose name is signed to the foregoing mortgage, and who is known to me, acknowledged before me on this day that, being informed of the contents of the mortgage, he executed the same voluntarily on the day the same bears date.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 13th day of January, A. D., 1934.

W. C. Beebe,
Notary Public, Baldwin County,
Alabama.

My commission expires December 15, 1936.

Seal.

Filed for record January 13th, 1934, at 11:45, A. M.
Recorded January 13th, 1934.

G. W. Humphries,
Judge of Probate.

EXHIBIT "B"

Form 672

CREDITOR'S RECEIPT

STATE OF ALABAMA

COUNTY OF BALDWIN

AGREEMENT

WHEREAS John N. Standard, hereinafter called "debtor", is indebted to the undersigned in the sum of \$3047.00 for purchase price of land (here briefly set out nature of indebtedness), same being, or secured by cc not recorded in Records of cc purchase of land---- County, State of -----).

AND WHEREAS, The Federal Land Bank of New Orleans and or the Agent of the Land Bank Commissioner has loaned to debtor the moneys with which to pay said indebtedness upon the condition and agreement that said indebtedness would be reduced and scaled down and that the undersigned would accept from debtor a sum less than the amount due in full payment and satisfaction of said indebtedness.

NOW THEREFORE, the undersigned, for and in consideration of the above and in further consideration of the sum of \$3047.00 in hand paid by debtor, receipt of which is acknowledged, does hereby accept said sum of \$3047.00 in full and final payment and satisfaction of said indebtedness and or any other indebtedness owed by debtor to the undersigned. Undersigned further agrees not to collect, attempt to collect, or revive in any way any further part of said indebtedness, nor to take any new security therefor. Undersigned further avers and agrees that the security set out in first paragraph above has been satisfied of record, if recorded, and that there are no further liens or encumbrances securing this indebtedness.

WITNESS My hand on this the 22nd day of January 1934.

J. W. McMillan.

WITNESS:
Chas. J. Ebert.

THE STATE OF ALABAMA,

CIRCUIT COURT, IN EQUITY.

Baldwin County } No. Fall Term, 1918

Solen Askesu Complainant

vs. Julia Askesu Defendant

In this cause it appears to the Register that the order of publication heretofore made in this cause, was published for four consecutive weeks, commencing on the 26 day of Sept 1918, in the Baldwin Times a newspaper published in Bay Minette Alabama, that a copy of said order was posted at the Court House door in Baldwin County on the 26th day of Sept 1918, and that another copy was sent by mail on the 19 day of 1918, to

And it now further appearing to the Register J. W. Richardson that the said

Julia Askesu

having to the date hereof failed to demur, plead to or answer the Bill of Complaint in this cause, it is now, therefore, on motion of Complainant, ordered and decreed by the Register J. W. Richardson that the Bill of Complaint in this cause be, and it hereby is in all things taken as confessed against the said her

This 24th day of Dec 1918

J. W. Richardson

Register.

THE STATE OF ALABAMA,
BALDWIN COUNTY.

}

CIRCUIT COURT, IN EQUITY.

No. 130 Term, 191.....

Solon Askew Complainant.....

vs.

Lula Askew Defendant.....

To T.W. Richerson Register:

In the above stated cause a Decree Pro Confesso having been taken against the Defendant, and evidence having been taken, and the cause being ready for submission for final decree, and no defense having been interposed, the

Complainant, by Stone & Stone

Solicitors of record, now files with the Register of this Court this written request to deliver the papers in this cause to the Judge for final decree in vacation.

Stone & Stone

Solicitor for Complainant.

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No.

Page

THE STATE OF ALABAMA,
BALDWIN COUNTY
CIRCUIT COURT, IN EQUITY.

vs.

REQUEST FOR DECREE IN
VACATION.

Filed *Dec 7* 191*8*

T W Reel

Register

Recorded in Record

Vol. Page

Register

Solon Askew

vs.

Lula Askew

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN EQUITY,
CIRCUIT COURT OF BALDWIN COUNTY.

This cause is submitted in behalf of Complainant upon the original Bill of Complaint,

Decree pro confesso, and depositions of Solon Askew and Pete
Hamilton, and proof of service by publication.

and in behalf of Defendant upon.....Nothing.....

J. W. Register

Register

3

No.....

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN EQUITY,
CIRCUIT COURT OF BALDWIN COUNTY.

vs.

NOTE OF TESTIMONY.

Filed in Open Court this 7th.....

day of Dec.....1918..

T W Belcher

Register

State of Alabama.

Baldwin County. In The Circuit Court of Baldwin County, Equity Side.

SOLOM ASKEW

Complaint for divorce for abandonment.

VS

LULA ASKEW.

To The Hon. A E Gamble, Judge of the Circuit Court 2nd. Judicial Circuit State of Alabama, sitting in Equity.

Your Orator Solon Askew, presents this his original bill of complaint for divorce for abandonment against Lula Askew, and shows unto your Honor. as follows.

That both he, and the said Lula Askew are over the age of 21 years, that he is now and has been for more than 3 years next immediately preceding the filing of this complaint a Bona Fide resident of the State of Alabama and County of Baldwin.

That Lula Askew is a non resident of the State of Alabama, and when last heard from resided in Pensacola State of Florida.

Orator Charges.

1st.

That he and Lula Askew were married at Lafayette, Alabama during the year 1904 and lived together as man and wife until August 16th. 1911, when respondent Lula Askew voluntarily deserted and abandoned your orator while living near Bay Minette, Baldwin County Alabama, and has continued so to voluntarily abandon your orator and has never returned to him.

2nd.

That Orator was without fault and gave said Lula Askew no good cause to so desert and abandon him, and that said abandonment has been for more than 2 years continuously.

Prayer for process

The premises considered Orator prays that You Honor will issue and cause to be made such orders and decrees as will make said Lula Askew party respondent to this bill of complaint and that she be required to answer plead or demur to the same within the time allowed by law.

Prayer for Relief.

The premises considered Orator prays that upon a final hearing of this cause that Your Nor will grant to him an absolute decree of divorce from said Lula Askew and such other or further or different relief as to

to your Honor may seem just and meet. and as in duty bound he will ever
pray. Etc. Etc.

Polou Askeu

By

Frank Stoupe Solicitor.

Foot Note.

The respondent is required to answer each paragraph of the within com-
plaint from 1 to 2 inclusive but not under oath as oath to same is hereby
expressly waived.

Polou Askeu

By Frank Stoupe Solicitor.

Solen Askew

THE STATE OF ALABAMA,
Baldwin COUNTY.

vs. *M/30*

IN EQUITY.

Lula Askew

CIRCUIT COURT OF
Baldwin COUNTY.

Register

In this cause it being made to appear to the ~~Judge~~ of this Court, in Term time, by the affidavit.....of

Solen Askew ~~agent of~~ Complainant,

that the Defendant.....

Lula Askew

is a non-resident.....of the State of Alabama when last heard from resided in Pensacola
Florida,

and further, that in the belief of said affiant..... the Defendant..... is..... over the age of 21 years;

it is therefore ordered that publication be made in the..... Baldwin Times

a newspaper published in..... Baldwin County,..... Alabama, once a week for four consecutive
weeks, requiring..... the said..... Lula Askew

to answer or demur to the Bill of Complaint in this cause by the..... 28th..... day of..... October..... 19 18

or after thirty days therefrom a decree Pro Confesso may be taken against..... her.....

This..... 26th..... day of..... September..... 19 18

D. W. Picannon
Register & ~~Judge~~ of the Circuit Court of
Baldwin County, Ala.

copy
No.

us.

ORDER OF PUBLICATION.

CIRCUIT COURT.

.....*County.*

Filed in office this.....*day of*

.....*19*.....

.....*Clerk.*

THE STATE OF ALABAMA, Baldwin COUNTY.

IN CIRCUIT COURT, IN EQUITY.

Solon Askew Complainant

vs.

Lula Askew Defendant

Oral examination before the Register of the following witnesses:

Solon Askew and Pete Hamilton

who reside in Alabama, said examination being conducted in Bay Minette Alabama,

on this the 9th day of Dec. 1918, and there being present

Solon Askew and Pete Hamilton

Solon Askew

The said being first sworn to speak the truth, the whole truth and nothing but the truth,

testified as follows:

My name is Solon Askew, I am 36 years old and I am the complainant in this case, Lula Askew is over the age of 21 years and is a non resident of Alabama, and lives in Pensacola Fla. We were married at La Fayette, Ala. in 1904 and lived together as man and wife until Aug. 16th. 1911 at which time she voluntarily deserted and abandoned me and has never since returned to me.

I have been a resident of Baldwin County Alabama all my life and for more than 3 years next preceding the filing of my complaint for divorce Lula Askew has never returned to me since she voluntarily abandoned and deserted me in Aug. 1911. She deserted me while we were living at Bay Minette Ala.

Solon Askew

Pete Hamilton testified as follows.

My name is Pete Hamilton and I know both Solon Askew and Lula Askew, they are both over 21 years of age, Lula Askew is a non resident and lives at Pensacola Fla. Solon Askew has lived all his life in Baldwin County Ala.

They were married in 1904, I was not at his wedding but know that they lived together as man and wife.

She left him in 1911 about August and has stayed away from him ever since they were living at Bay Minette Ala. then.

She has never come back to live with him.

She voluntarily deserted him in 1904 and has stayed away ever since that time.

I am no kin to either one of them.

witness
H. H. Stone

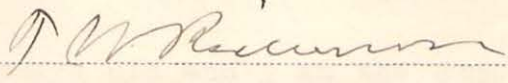
his
Pete Hamilton
mark

I, T W Richerson, as Register and Commissioner

hereby certify that the foregoing depositions on oral examination were taken down by me in writing in the words of the witnesses and read over to them and they signed the same in the presence of T W Richerson, at the time and place herein mentioned; that I have personal knowledge of the personal identity of the said witnesses or had proof made before me of the identity of said witnesses; that I am not of counsel or of kin to any of the parties to said cause; or in any manner interested in the result thereof.

I enclose the said Oral Examination in an envelope to the Register of said Court, and placed the same on file in my office.

Given under my hand and seal this the 9th day of December, 1918, 19

 (L. S.)
Commissioner.

WITNESS FEES.

I hereby certify that the following named witnesses are entitled to the amounts stated below:

<u>None claimed.</u> days' attendance at \$1.50 per day \$
 days' attendance at \$1.50 per day \$
 days' attendance at \$1.50 per day \$
 days' attendance at \$1.50 per day \$
 days' attendance at \$1.50 per day \$
 days' attendance at \$1.50 per day \$
 days' attendance at \$1.50 per day \$
 days' attendance at \$1.50 per day \$

REGISTER'S FEES.

..... days at \$1.50 per day \$
..... words at 20 cents per hundred \$

No. _____ Page _____

The State of Alabama,

_____ COUNTY.

IN CIRCUIT COURT, IN EQUITY.

Alan Astor

vs. Complainant,

Lula Astor

Defendant.

Deposition Taken Before Register on Oral Examination.

Deposition of *Beff*

for _____

Filed *9* day of *Dec*, 19*18*

Published by order of the Court, _____

day of _____, 19____

Register.

Bay Minette, Ala.,

October 22nd, 1918

M

Solen Askew
vs
Lula Askew

NOTICE TO NON-RESIDENT
Stone & Stone, Attys for Complainant

THE BALDWIN TIMES

ABNER J. SMITH, PROPR.

FINE JOB PRINTING. BEST ADVERTISING MEDIUM

PROMPT SERVICE. LOWEST PRICES.

LOCAL AND LONG DISTANCE TELEPHONE

All Bills Must Be Paid Within 30 Days

To publishing above Notice to Non Resident in The Baldwin Times
in issues of September 26th and October 3, 10, 17th, 1918:.... \$3.50

THE BALDWIN TIMES

ABNER J. SMITH, PROPRIETOR

DEVOTED TO THE INTEREST OF BALDWIN COUNTY AND HER PEOPLE

PUBLISHED EVERY THURSDAY

SUBSCRIPTION: \$1.00 PER YEAR IN ADVANCE

ADVERTISING RATES ON APPLICATION

TELEPHONE No. 7, LOCAL AND LONG DISTANCE

BAY MINETTE, ALA.,

AFFIDAVIT OF PUBLICATION

Notice to Non-Resident.

Solen Askew vs. Lula Askew. No. 130. The State of Alabama, Baldwin County. In Equity. Circuit Court of Baldwin County.

In this cause it being made to appear to the Register of this Court, in Term time, by the affidavit of Solen Askew, Complainant, that the Defendant Lula Askew, is a non-resident of the State of Alabama, when last heard from resided in Pensacola Florida, and further, that in the belief of said affiant the Defendant is over the age of 21 years; it is therefore ordered that publication be made in the Baldwin Times, a newspaper published in Baldwin County, Alabama, once a week for four consecutive weeks requiring the said Lula Askew to answer or demur to the Bill of Complaint in this cause by the 28th day of October, 1918, or after thirty days therefrom a decree Pro Confesso may be taken against her.

This 26th day of September, 1918.
T. W. Richerson,
Register of the Circuit Court of Baldwin County, Ala.
Stone and Stone, Attys. 32-4t

STATE OF ALABAMA,
BALDWIN COUNTY.

ABNER J. SMITH, being duly sworn, deposes and says that he is the PUBLISHER of THE BALDWIN TIMES, a Weekly Newspaper published at Bay Minette, Baldwin County, Alabama; that the notice hereto attached of

Notice to Non-Resident.

Solen Askew vs. Lula Askew. No. 130. The State of Alabama, Baldwin County. In Equity. Circuit Court of Baldwin County.

Was published in said Newspaper for 4 consecutive weeks in the following issues:

Date of first publication	September 26th, 1918	Vol. 29	No. 32
“ “ second “	October 3rd, 1918	Vol. 29	No. 33
“ “ third “	October 10th, 1918	Vol. 29	No. 34
“ “ fourth “	October 17th, 1918	Vol. 29	No. 35

Subscribed and sworn to before the undersigned

this 26th day of October 1918.

Abner J. Smith
Publisher.

THE STATE OF ALABAMA,

Baldwin County.

CIRCUIT COURT, IN EQUITY.

Solon Askew

Complainant.....

vs.

No.....

Lula Askew

Defendant.....

Now comes the Pltff by Stone & Stone

Solicitor of Record, and makes application to the Register of said Court to issue a Commission to take the testimony in said cause, or oral examination, of the following named witnesses, who reside within the State of Alabama:

NAME OF WITNESS.

RESIDENCE OF WITNESS.

Solon Askew

Bay Minette. Ala.

Pete Hamilton

Bay Minette. Ala.

And they suggests the name of T. W. Richerson Register who resides at Bay Minette, Ala. as a suitable person to be appointed Commissioner to take the testimony of said witnesses...

This 9th day of December 1918 19.....

Stone & Stone

Solicitor for Solon Askew

The Applicant for said Oral Examination is hereby required to give in writing ----- days notice thereof, before the examination is taken, to the adverse party, or to ----- Solicitor ----- of Record, if either reside ----- in this District, but if neither reside therein, the notice may be given by entry on the Order Book of the Clerk.

Register.